

EXHIBIT “5”

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION on the Complaint of	
DANIEL JEAN-GILLES,	Complainant,
v.	
ROCKLAND COUNTY,	Respondent.

REBUTTAL

EEOC Charge No.
520-2018-01462

I, Daniel Jean-Gilles, the above named Complainant submit this REBUTTAL to Respondent's VERIFIED POSITION STATEMENT.

As an initial matter, it must be noted that:

- i. The complaint is timely filed;
- ii. Respondent did not present a non-discriminatory basis for its actions, in its response to the factual averments contained in the above numbered EEOC charge;
- iii. Respondent did not produce evidence of enforcing a neutral policy for filing the position of Commissioner of Human Rights or that any such neutral policy exists.
- iv. Portions of Respondent's position are not credible and raise issues of fact and credibility on the part of Respondent's personnel; Respondent's Assistant County Attorney, of Counsel, cannot honestly or truthfully admit or deny a number of the factual averments contained in the above numbered EEOC charge, of "...deponent's own knowledge...", because he was not a witness to them, and Respondent failed to include sworn statements from employees of the Respondent municipal corporation, who have first hand knowledge of said events. He is however a fact witness to a number of Respondent's past practices, policies, and employment actions and should be treated as such.

The complaint is timely filed.

Respondent stated "...Constance Frazier (black, woman) served as Commissioner of Human Rights from 7/13/17 to 6/1/18 and again from 6/25/18 to present." The complaint was verified and filed with the EEOC on February 21, 2018, which is 223 days after the most recent date of occurrence of discrimination, and well within the 300 days allowed by the EEOC.

Respondent did not present a non-discriminatory basis for its actions, depicted in the factual averments contained in the above numbered EEOC charge.

1. *Applying for the specific position:*

Respondent was well aware that I was interested in being appointed, as a promotion of an internal candidate, to the position of Commissioner of Human Rights because I filed suit for it. Respondent has never provided any other promotional or advancement opportunities in the department of the Commission on Human Rights. Respondent accurately depicts the extent to which I engaged in protected activities seeking the position, and evidences my opposition to Respondent's consistently applied discriminatory employment practices. Respondent's Assistant County Attorney, of Counsel, maintains this record on behalf of the County, produces such information when required, as here, and bridges administrations. He represents the systemic memory of the above named municipal corporation's past practices, policies, and discriminatory employment actions.

Respondent admits that "...Sreeramulu Nagubandi (Indian/race not identified, man) served as Commissioner of Human Rights from 2/28/2000 to 5/7/16..." Therefore, there was no promotional advancement opportunity in the department, nor any opportunity to submit an application for the position of Commissioner of Human Rights, or for any other promotion within the Human Rights career track, until after May 7, 2016, which was a Saturday. These decisions are controlled by Respondent and Respondent admits that "...Dr. Penny Jennings (black, woman) served as Commissioner of Human Rights from 5/[2]3/16..." During the fifteen (15) days that Respondent purports that a vacancy in this position existed, in 2016, Respondent did not provide any kind of notice or advertisement announcing said vacancy and or a search to fill said vacancy. Moreover, Respondent made no efforts to notify the public, advertise, or announce a search to fill the position of Commissioner of Human Rights, in 2016, 2017 or 2018.

On or about May 9, 2016, J. Guillermo Rosa, Deputy County Executive (DCE), articulated Respondent's policy for filling the position of Commissioner of Human Rights, for Rockland County, that Respondent would limit consideration of credible applicants for employment in this position, on the basis of sex. He stated that the county was going to hire a woman for the position of Commissioner of Human Rights, because the last two commissioners were men and that hasn't worked out too well. See Exhibit A.

In fact, said DCE made the hiring decision to make this appointment on May 10, 2016. See Exhibit B.

Respondent exerts control over most of the people who were in the meeting with Respondent's DCE on or about May 9, 2016, during the course of a normal work day and can easily make those who are still employees of Respondent available for interview. Kindly request that Respondent produce all the attendees of this meeting for personal or telephonic witness interviews with the Federal Investigator assigned to the above numbered EEOC charge to confirm the policies articulated by the Deputy County Executive on that day. See Exhibit C.

Respondent consistently enforced this discriminatory policy on May 23, 2016, July 13, 2017, and June 25, 2018 and Respondent did not have a neutral policy that it adhered to, as far as that position was concerned, on those dates. Therefore any further application for said position would constitute a futile gesture as held in *Teamsters v. United States*.

Kindly ask Respondent to provide all documents and records related to the methods, practices, policies, procedures, or interactive processes that Respondent relied on, which resulted in the recruitment and/or appointments of Dorothy P. Jennings (Dr. Penny Jennings), and Constance L. Frazier, to the position of Commissioner of Human Rights, in 2016, 2017, and 2018.

Respondent did not produce evidence of enforcing a neutral policy for filling the position of Commissioner of Human Rights or that such a neutral policy exists.

2. *Disparate impact resulted from neutral policies.*

Respondent's practice for filling the position of Commissioner of Human Rights is arbitrary and capricious because it does not rely on objective criteria or an objective search for qualified candidates. Respondent is aware of its responsibility to post vacancies, for internal candidates, as is evidenced in Exhibit D, attached. However, Respondent did not provide such a post, and did not post for the vacancy in the position of Commissioner of Human Rights in 2016, 2017, and 2018. Respondent's chief administrators recruited two specific women for those appointments and did not *credibly* consider any male applicants, internally, or externally, nor did Respondent appoint any male applicant to this position, temporarily or permanently.

Again, Respondent's DCE made the hiring decision to appointment Dr. Penny Jennings as Commissioner of Human Rights, on May 10, 2016. See Exhibit B.

Respondent rather, relied on a pattern and practice where the principal administrators of the county, randomly recruit specific individuals for employment, without advertisement or notice, and little consideration, beforehand, for whether or not the prospective pick meets the qualifications for the job. Respondent's method(s) towards filling the position of Commissioner of Human Rights in 2016, 2017, and 2018 are arbitrary and capricious and unequal and adversely and disparately impact Black men, such as Complainant.

Kindly request that Respondent at the very least, provides copies of all documents related to all temporary appointments to the position of Commissioner of Human Rights and related to advertising or recruitment for the position of Commissioner of Human Rights, in 2016, 2017, and 2018, as well as the methods used to select the person(s) that were appointed temporarily and permanently, to that position, in 2016, 2017, and 2018.

Moreover, Respondent was well aware of the fact that, since 2013, continuing to 2016, and for much of 2017, the Commission on Human Rights was a two-person department and that I was the go-to person for most of the day-to-day issues that arose in the

department, based on personal interaction with the DCE and other employees in Respondent's County Executive's department.

Kindly request that Respondent, Respondent's County Executive (CE), DCE, and Respondent's Assistant County Attorney, of Counsel, provides the dates whereby Respondent's current chief administrators (CE, DCE, County Attorney, etc.) first learned of the facts of my prior protected activity, and the dates whereby Respondent's County Attorney, and/or Assistant County Attorney, of Counsel, first briefed the current chief administrators of the county about the facts of my prior protected activity.

Respondent is well aware of my qualifications for appointment to a number of positions, and as a promotion, including a permanent or temporary appointment to the position of Commissioner of Human Rights, because of my prior service in that position, my recent interactions with the CE's department, and, because Respondent arbitrarily appointed me as this administration's first ADA Coordinator, in 2018 without posting the position or soliciting applications for that position.

Moreover, Exhibit 4 of Respondent's VERIFIED POSITION STATEMENT evidences that this administration of the Respondent municipal corporation, had no Black male employees in a Commissioner/Department head position in 2016 and 2017.

Portions of Respondent's position are not credible and raise issues of fact and credibility on the part of Respondent's personnel.

Respondent's purported ignorance of my desire for promotion to, or my qualifications for, the position of Commissioner of Human Rights or any other position in the Human Rights Commission or any other promotional opportunity, as stated in its response and by Respondent's Assistant County Attorney, of Counsel, are not credible.

Kindly ask Respondent's Assistant County Attorney, of Counsel:
Why he indicated to Sr. Federal Investigator, Ashraf Ahmed, an interest in discussing the complaint with Complainant, if, in truth, he did not, and had no real intention of discussing anything with Complainant and, did not discuss anything with Complainant;

Provide the dates whereby Respondent's Assistant County Attorney, of Counsel, first briefed the current chief administrators (CE, DCE, County Attorney, etc.) of the county about the facts of my prior protected activity and the related stipulation mentioned in Respondent's VERIFIED POSITION STATEMENT;


Provide the dates whereby Respondent's Assistant County Attorney, of Counsel, first had discussion about Complainant in relation to the position of Commissioner of Human Rights.

Respondent has a policy and practice favoring employment and advancement on the basis of sex, which adversely and disparately impacts Black men, such as Complainant.

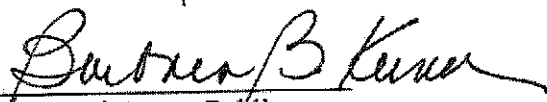
Kindly ask Respondent's Assistant County Attorney, of Counsel:
Provide the methods, practices, policies, procedures, or interactive processes that
Respondent relied on, which resulted in the appointments of Lori Gruebel to the position
of Commissioner of Personnel, in June of 2017 and Judi Hunderfund, as Director of
Consumer Protection in September of 2017. See Exhibits E & F.

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS:

Daniel Jean-Gilles, being duly sworn, deposes and says: that he/she is the Complainant herein; that he/she has read (or had read to him or her) the foregoing REBUTTAL and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.


Daniel Jean-Gilles


Subscribed and sworn to
before me this 23 day
of January, 2019


Signature of Notary Public



BARBARA B. KUNAR
Notary Public, State of New York
No. 01KU061272
Qualified in Rockland County
Commission Expires July 16, 2019

Exhibit A

From: Janet Marsalisi <janet813@me.com> 
Subject: Re: PERSONAL AND CONFIDENTIAL
Date: June 23, 2016 5:25:00 AM EDT
To: Daniel Jean-Gilles <djean_gilles@msn.com>

Hi Daniel,

I would have replied sooner, but I wanted to check my notebook to help jog my memory.

If I remember correctly, the date was Monday, May 9, but perhaps that's not important. Anyway, I didn't write anything other than the new commissioner would be in place by June 1.

I remember DCE Rosa saying that they were looking to hire a woman--the last two commissioners were men and that hasn't worked out too well.

Sorry, but that's all I have.

Janet

On Jun 21, 2016, at 10:26 PM, Daniel Jean-Gilles <djean_gilles@msn.com> wrote:

PERSONAL AND CONFIDENTIAL
For you only. Please do not discuss with anyone.

Hi
I apologize for acting strange earlier today, and more so for disturbing your evening at home.

Were you in the meeting with the Deputy County Executive, Guillermo Rosa (DCE Rosa) the week after Ram's resignation? I believe it was on Wednesday, May 11th, but if I'm mistaken, feel free to correct me.


If you were there, do you remember what DCE Rosa said about the person that would be hired for the Commissioner position?

If you wouldn't mind, could you write back and tell me everything that you recall DCE Rosa said that afternoon.

Thank you.

Daniel

Sent from my Mobile device. DJ-G

From: J <luveemii@aol.com> 
Subject: Re: PERSONAL AND CONFIDENTIAL
Date: June 22, 2016 1:12:26 AM EDT
To: Daniel Jean-Gilles <djean_gilles@msn.com>

Daniel,

I recall a few things from the meeting. I remember him saying that it was going to be someone from the County with a lot of knowledge of the County's history. At one point he slipped up and said "she", when Cinthia asked if the new appointee was female, he said maybe, or something along those lines. And said he thought a female in the position would be good for the department and for the office. I don't know if it was at or after the meeting he mentioned interviewing one male and two females for the position. Other than that I don't recall anything too specific. I did take notes I believe, I'd be more than happy to look back on them. I have a cell number for Cinthia it is 845-821-2160.

Sent from my iPhone

On Jun 21, 2016, at 10:32 PM, Daniel Jean-Gilles <djean_gilles@msn.com> wrote:

PERSONAL AND CONFIDENTIAL.

For you only. Please do not discuss with anyone.

Hi

I apologize for acting strange earlier today, and more so for disturbing your evening at home.

Were you in the meeting with the Deputy County Executive, Guillermo Rosa (DCE Rosa) the week after Ram's resignation? I believe it was on Wednesday, May 11th, but if I'm mistaken, feel free to correct me.

If you were there, do you remember what DCE Rosa said about the person that would be hired for the Commissioner position?

If you wouldn't mind, could you write back and tell me everything that you recall DCE Rosa said that afternoon.

Also, could you share any contact information that you have for Cinthia?

Thank you.

Daniel

Sent from my Mobile device. DJ-G

From: Daniel Jean-Gilles djean_gilles@msn.com
Subject: Text messages
Date: Jan 17, 2019 at 1:59:53 PM
To: djean-gilles@msn.com

9:45 ↗

◀ Contacts



Cinthia >



Text Message
Jun 22, 2016, 11:07 AM

Hi Cinthia:

How are you? Hope all is well, considering the circumstances.

I know you will stand strong and keep your head up. That's what people like us do!

Do you remember the meeting with the Deputy County Executive, Guillermo Rosa (DCE Rosa) the week after Ram's resignation? I believe it was on Wednesday, May 11th, but if I'm mistaken, feel free to correct me.

How are you? Hope all is well, considering the circumstances.

I know you will stand strong and keep your head up. That's what people like us do!

Do you remember the meeting with the Deputy County Executive, Guillermo Rosa (DCE Rosa) the week after Ram's resignation? I believe it was on Wednesday, May 11th, but if I'm mistaken, feel free to correct me.

If so, do you remember what DCE Rosa said about the person that would be hired for the Commissioner position?

If you wouldn't mind, could you write back and tell me everything that you recall DCE Rosa said that afternoon.

If so, do you remember what DCE Rosa said about the person that would be hired for the Commissioner position?

If you wouldn't mind, could you write back and tell me everything that you recall DCE Rosa said that afternoon.

Thank you.

Daniel Jean Gilles



9:46

◀ Contacts



CS

Cinthia



Commissioner position?

If you wouldn't mind, could you write back and tell me everything that you recall DCE Rosa said that afternoon.

Thank you.

Daniel Jean-Gilles

Jun 23, 2016, 5:02 PM

Thanks for reaching out. Things happen for a reason... Very true and exact of standing strong and focused.

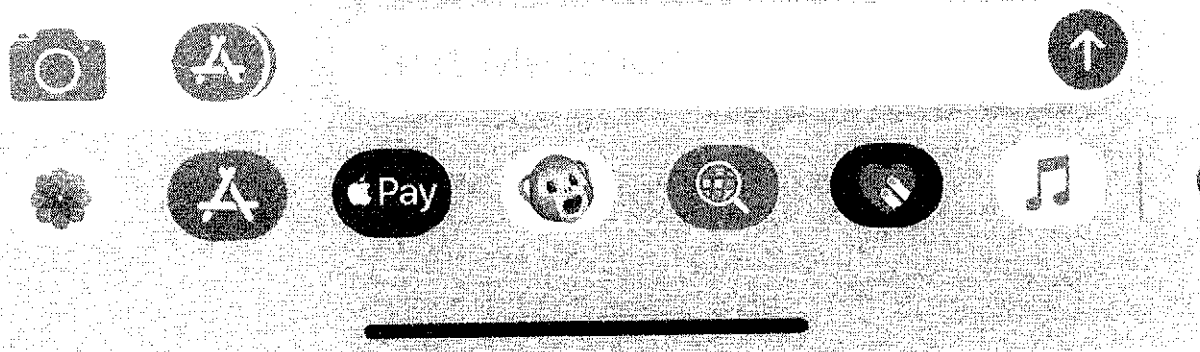
He spoke about bringing in one person to fill both

position. He said this person will be the BEST for our office.

He said they had three candidates that they were interviewing.

In a separate discussion that same day in my office he said it was a woman and that she will come in and do the job of two departments.

Is everything ok?



10:17



Cinthia >

Exhibit B

**ROCKLAND COUNTY PRE-APPOINTMENT REVIEW
OF SELECTED CANDIDATE TO FILL VACANCY**

DEPARTMENT: Human Rights

Proposed Appointment Details:

Name: <u>Dorothy P. Jennings</u>	Appointment Date: <u>5/23/16</u>	Scheduled Work Hrs per week: <u>40</u>
Title of Position to Which Appointment will be Made: <u>Commissioner</u>	Position Control No. _____	Supervisor Name: <u>J. Guilbrun Rosa</u>

Nature of Appointment:

☐ Perm/CP from Eligible List # _____ ☐ Perm/CP from PEL # _____
Rank on List After Canvassing: _____ No. Canvassed: _____

☐ Provisional/Temporary ☐ Eligible List Reduced ☐ No Available Eligible List ☐
Was position posted or advertised? ☒ No ☐ Yes
If posted/advertised, list venues and dates: _____

☐ Temporary 9992: ☒ New Appointment ☐ Extension of Temporary Appointment
☐ Other: Explain: _____

Candidate Information:

How many other candidates were considered for this position? 5
No. of Applicants/Resumes Reviewed: 5 No. of Candidates Interviewed: 1
Names of Candidates Interviewed: _____
RESUMES REVIEWED: Victor Reyes, Gerald H. Irman, DORAZELLA Hilligian
Myrnia Hargrove

Basis for selection of this candidate: e.g., describe candidate's qualifications against the position requirements as compared to other candidates. Dr. Jennings' qualities, education and experience
clearly surpassed that of any other candidate.

Is this candidate a current County employee?
☒ No ☐ Yes: Current Department: _____
Current Title: _____
Current Salary Grade: _____ Current Salary Rate: _____
Is this a promotion? ☐ No ☐ Yes
Is this a new appointment to a different title (job change)? ☐ No ☐ Yes
Is this an appointment to an additional position? ☐ No ☐ Yes

Is this candidate a former County employee?
☒ No ☐ Yes: Dates of County employment: from _____ to _____
Reason for Leaving: _____ ☐ Incentive Retiree
Former Department (s): _____
Former Title (s): _____
Last Salary Grade: _____ Last Salary Rate: _____

Submitted by: [Signature] Date: 5-10-16
Department: CE Office Telephone: X 5122

Personnel Comments: _____

Date: _____ Signature: [Signature]

Exhibit C

Witnesses to Deputy County Executive's discriminatory policy statement.

pandj1@optonline.net.- Jerry Mancuso. - (845) 641-5768

Jtdiaz1113@gmail.com - Jessica Sampson - (845) 777-5620

lreginasag@yahoo.com - Liz Regina - (845) 270-2150

iluvmytrooper@aol.com - Karey Lynch - (845) 591-6984

marsjay@optonline.net

janet813@me.com. - Janet Marsalisi - (845) 500-0235

tstrieter@aol.com. - Todd Strieter (845) 641-3205

mfrank1222@aol.com. - Maria Frank - (845) 274-5242

(845) 821-2160. - Cinthia Santiago

Dillon Garvey - 845-310-8840

Glenn Van Dyck. 845-596-5067

Exhibit D

Jean-Gilles, Daniel

From: Lori Gruebel
Sent: Wednesday, January 02, 2019 2:08 PM
To: Rockresumes
Subject: Chief of Staff (CE office)- job opportunity

Note: No further distribution is required at this time; this is a canvas for internal managerial candidates.

CHIEF OF STAFF, COUNTY EXECUTIVE

The County Executive is seeking a candidate for the executive, managerial, and administrative position of Chief of Staff. The work in this position involves responsibility for effectively organizing and coordinating staff operations, maximizing staff productivity and implementing policy guidelines covering a broad spectrum of issues and projects across the County. The work is performed under the general supervision of and in close concert with the County Executive or his designee.

The work often involves highly sensitive issues, requiring diplomacy, discretion, and responsiveness. This position will often act independently and in comportment with the overall mission to better serve the public. This position will also involve daily dealings with public officials, elected officials, representatives of the business community, the press, constituents, and other groups and individuals.

The individual in this position will supervise and work cross functionally with executive, professional and other staff and must have the ability to strategically plan, supervise, balance and coordinate a variety of complex initiatives and projects. The candidate must also effectively partner with key individuals across functions and organizations.

Candidates should possess the following: thorough knowledge of the principles and practices of public administration and Federal, New York State, and local regulations applicable to public services; experience in the preparation and cost analysis of departmental budgets; ability to analyze complex public issues and develop or efficiently coordinate the development of comprehensive recommendations consistent with the mission of the County Executive; ability to plan and oversee the development and implementation of multi-year Capital Projects, utilizing a strategic approach to multi-year funding; excellent written and oral communications skills; ability to utilize a highly organized approach to complex work; and ability to coordinate multiple issues, manage conflicts, facilitating understanding and cooperation; and ability to deliver comprehensive accomplishments on time. A bachelor's degree is required; Rockland County residency and an advanced degree from a nationally accredited secondary educational institution are preferred.

This position is full time. Compensation and benefits are under Non-Union Management, designated as Group 3, and compensated at the rate of approximately \$110,00 annually.

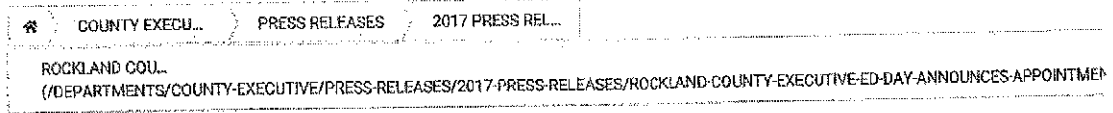
Candidates wishing to apply for this opportunity should submit their resume accompanied by a cover letter and list of personal and business references via email (addressed to Rockresumes@co.rockland.ny.us). All resumes received by midnight on January 11, 2019 will be considered.

Exhibit E



(1)

Custom Search



County Executive

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2016 Press Releases (/departments/county-executive/press-releases/2016-press-releases/)

2015 Press Releases (/departments/county-executive/press-releases/2015-press-releases/)



Ed Day, Rockland County Executive

FOR IMMEDIATE RELEASE

June 21, 2017

Contact: Jane Lerner, Director of Strategic Communications
Office of the County Executive (845) 638-5645



Rockland County Executive Ed Day Announces Appointment of Commissioner of Personnel

NEW CITY, NY – Rockland County Executive Ed Day is pleased to announce the appointment of Lori Gruebel as Commissioner of Personnel.

(<https://login.microsoftonline.com/rocklandgov.com>) was unanimously approved by the Rockland County Legislature.

<http://rocklandgov.com/departments/county-executive/press-releases/2017-press-releases/r...> 1/17/2019

"Lori is an innovative manager who has the skills we need to manage this key department," said Rockland County Executive Ed Day. "She has a strong record of achievement in the private sector and a wealth of knowledge and experience to bring to the county."

Ms. Gruebel succeeds Joan M. Silvestri, who was named Commissioner of Rockland's Department of Social Services in April.

With Lori Gruebel's appointment, 14 of the 26 departments in Rockland County government are headed by women. Half of the county departments have female deputy directors.

"My administration is committed to making sure that well-qualified, talented women have every opportunity to succeed," Day said. "There is no glass ceiling in Rockland County government."

Before starting work with the county in February, Ms. Gruebel worked for Verizon for 16 years, where she earned praise as a top achiever with strong management skills.

"I am looking forward to working with this knowledgeable staff and am eager to utilize my prior career and educational experiences in this field to meet the future needs of the county," she said. "I am truly grateful that I was afforded the opportunity to serve Rockland County in this capacity and am excited about the work we are doing to develop a top-notch workforce to serve the people of Rockland."

She has a bachelor's degree in human development from Syracuse University and studied contract negotiation and collective bargaining at Cornell University School of Industrial and Labor Relations

She lives in New City with her husband and infant daughter.

#

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Web site comments or suggestions? [Send us feedback!](http://rocklandgov.com/feedback) (<http://rocklandgov.com/feedback>)

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Exhibit F



(U)

Custom Search



COUNTY EXECUTIVE PRESS RELEASES 2017 PRESS RELEASES

ROCKLAND COUNTY
(/DEPARTMENTS/COUNTY-EXECUTIVE/PRESS-RELEASES/2017-PRESS-RELEASES/ROCKLAND-COUNTY-EXECUTIVE-ED-DAY-APPOINTS-NEW-DIRECTOR

County Executive

2019 Press Releases (/departments/county-executive/press-releases/2019-press-releases/)

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2016 Press Releases (/departments/county-executive/press-releases/2016-press-releases/)

2015 Press Releases (/departments/county-executive/press-releases/2015-press-releases/)



Ed Day, Rockland County Executive

FOR IMMEDIATE RELEASE

September 20, 2017

Contact: Jane Lerner, Director of Strategic Communications
Office of the County Executive (845) 638-5645
lernerj@co.rockland.ny.us



(https://login.microsoftonline.com/)

Rockland County Executive Ed Day Appoints New Director of Consumer Protection

NEW CITY, NY – Rockland County Executive Ed Day has named Judi Hunderfund director of the Department of Consumer Protection.

The Rockland County Legislature approved the appointment at its Tuesday meeting.

Hunderfund, a chemical engineer, has worked for the County for 30 years, most recently as director of Environmental Public Health in the Rockland County Department of Health.

"Judi's analytical skills and attention to detail along with her considerable experience within County government make her the ideal person to move forward the Department of Consumer Protection," Day said. "She will fight to make sure that Rockland consumers are treated fairly."

Hunderfund has many plans to continue and expand the work done by the Department of Consumer Protection.

She plans to implement new technology to reorganize and streamline the Department to better serve both the public and contactors.

"The overarching goal is to provide better customer service," she said. "That includes making additional information available on-line, increasing public awareness of the Department, making it easier to access information during non-business hours and using a more consistent approach dealing with unlicensed contractors."

The Rockland County Department of Consumer Protection/Weights & Measures protects consumers by investigating complaints, assists in developing laws to protect the public and warns of frauds and scams.

The Weights & Measures component of the department enforces New York State Agriculture & Markets Laws and conducts inspections of scales, gas stations, octane sampling, among other responsibilities.

Hunderfund, a Tomkins Cove resident, succeeds Director Terry Grosselfinger, who died in May.

Fourteen of the County's 26 departments are headed by women, a number that steadily increased during Day's administration.

###

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